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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re	)	Case No. 2:12-bk-26069-RK
)	
ALLEN B. SHAY,	)	Chapter 7
)	
	)	REPLY OF CHAPTER 7 TRUSTEE
	)	TO DEBTOR'S OPPOSITION TO
Debtor.	)	MOTION FOR ORDER
	)	DISALLOWING CLAIM NO. 14
	)	FILED BY ALLEN SHAY
)	
)	
)	
	)	<u>Hearing Date:</u>
	)	Date: April 16, 2019
	)	Time: 2:30 p.m.
	)	Place: Courtroom 1675
	)	255 E. Temple Street
	)	Los Angeles, California
)	
)	
)	
)	

1 The court has broad discretion to determine whether a claim for an administrative
2 expense is, in actuality, an administrative expense. In re Dakota Indus., Inc., 31 B.R. 23, 26
3 (Bankr.D.S.D.1983). Bankruptcy courts should strictly scrutinize claims and narrowly construe
4 the terms “actual” and “necessary.” Matter of Patch Graphics, 58 B.R. 743, 745
5 (Bankr.W.D.Wis.1986). See, Grantham v. Eastern Marine, Inc., 93 B.R. 752, 754
6 (Bankr.N.D.Fla.1988); In re Sinclair, 92 B.R. 787, 788 (Bankr.S.D.Ill.1988). The burden of
7 proof to demonstrate that the claim is an administrative claim is upon the movant. Sinclair, 92
8 B.R. at 788; Patch Graphics, 58 B.R. at 745. The movant must also show “that the expenses
9 were reasonable, necessary and benefited the estate.” In re Hendersonville Bowling Center, Inc.,
10 65 B.R. 963, 965 (Bankr.M.D.Tenn.1986). The Patch Graphics court stated that “the expense in
11 question must be shown to have been ‘actual and necessary.’ ” 58 B.R. at 745.

12 “In order for a claim on a postpetition expense to be allowed as an administrative priority
13 claim, an estate must actually make beneficial use of any value received in exchange for the
14 incurring of the expense.” In re Right Time Foods, Inc., 262 B.R. 882, 884
15 (Bankr.M.D.Fla.2001).

16 The party asserting an administrative claim bears the burden of proving that the claim
17 should be allowed. “The claimant has the burden of proving entitlement to an administrative
18 expense by preponderance of the evidence.” In re Kmart Corporation, 293 B.R. 905, 909
19 (Bankr.N.D.Ill.2003). “The burden of proving an entitlement to an administrative expense is on
20 the claimant.” In re Central Idaho Forest Products, 317 B.R. 150, 155 (Bankr.D.Idaho 2004).

21 Here, there is no showing that the Debtor in fact paid for any of the services purportedly
22 obtained as set forth in Claim No. 14. In addition, there is no showing or admissible evidence
23 that the plumbing repairs or the landscaping were urgent or necessary or whether the purported
24 services provided any benefit to the estate. At no time did the Trustee authorize the Debtor to
25 incur the charges on behalf of the estate and, at the time, the Trustee was in the process of
26 obtaining court approval of the sale of the property (the sale order was entered December 27,
27 2016), which the buyers purchased on an “as is, where is” basis with no representations or
28 warranties. Moreover, the buyers were aware of the plumbing issue and proceeded to close

escrow on the sale of the property.

Based on all the foregoing, the Trustee believes that Claim No. 14 should not be allowed as an administrative claim or a general unsecured claim. Alternatively, if the Court believes it is appropriate, the Trustee is amenable to allowing Claim No. 14 as a late-filed general unsecured claim that is subordinated to all other filed claims.

CONCLUSION

For the reasons set forth above and in the Motion, the Debtor respectfully requests that the Court enter an order (i) granting the Motion in its entirety; (ii) sustaining the Debtor's objection to Claim No. 14 and disallowing Claim No. 14 in its entirety; and (iii) granting such other and further relief the Court deems just and proper.

Dated: April 9, 2019

LEVENE, NEALE, BENDER,
YOO & BRILL L.L.P.

By: /s/ Anthony A. Friedman
ANTHONY A. FRIEDMAN
Attorneys for Alfred H. Siegel,
Chapter 7 Trustee for the Bankruptcy Estate
Of Allen B. Shay

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled **REPLY OF CHAPTER 7 TRUSTEE TO DEBTOR'S OPPOSITION TO MOTION FOR ORDER DISALLOWING CLAIM NO. 14 FILED BY ALLEN SHAY** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **April 9, 2019**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Marvin B Adviento madviento@wrightlegal.net, ggrant@wrightlegal.net; sbennett@wrightlegal.net
- Lawrence R Boivin lboivin@boivinlaw.com, lrboivin@gmail.com
- Patrick K Bruso bruso005@umn.edu
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2. SERVED BY UNITED STATES MAIL: On **April 9, 2019**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Allen B. Shay
202 S Lake Ave, Ste 260
Pasadena, CA 91101

The Honorable Robert Kwan
United States Bankruptcy Court
255 E. Temple Street, Suite 1682
Los Angeles, CA 90012

RSN
Chase Home Finance Milwaukee
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700 Kansas Lane
Monroe, LA 71203

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McCarthy & Holthus, LLP
1770 Fourth Avenue
San Diego, CA 92101

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **April 9, 2019**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

April 9, 2019
Date

Lisa Masse
Type Name

/s/ Lisa Masse
Signature